

INFORMATION LETTER

NATIONAL CANNERS ASSOCIATION

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N.C.A. Files Petitions for Standards for Canned Fruits

The N.C.A. on July 20 filed with the FDA petitions proposing the establishment of definitions and standards of identity for canned berries and canned plums and an amendment to the standard of identity for canned pineapple.

The proposal on berries would provide for standards for canned blackberries, blueberries, boysenberries, dewberries, gooseberries, huckleberries, loganberries, black raspberries, red raspberries, strawberries, and youngberries.

The plum proposal covers the commonly packed plums of the *Domestica* (*Prunus domestica*, L.) varietal group, such as purple, green gage, and golden Burton.

The proposed amendment to the standard of identity for canned pineapple would permit the addition of mint flavoring with suitable declaration.

N.C.A. Issues New Booklet on 'The Canning Industry'

The Canning Industry, 44-page booklet describing the canning industry and the public service values of its products, has been reissued by the N.C.A. Information Division.

Each chapter presents an individual phase of canning activity: the history of canning, the economic importance of the industry, scientific research in field and factory, containers, canning machinery, canning procedure, distribution and marketing, buying canned foods, nutritive values, and how to get the best use out of canned foods.

The booklet was published initially in 1952 and the new edition is the fourth. Data in earlier editions have been brought up to date, and new features have been added.

Copies of the fourth edition of *The Canning Industry* were mailed this week to N.C.A. members, with the request that they disseminate its information to their local news and radio outlets, and use it as source material for appearances before local clubs and other organizations, and in their own public relations programs.

N.C.A. Urges Legislation To Prohibit State Taxation of Interstate Income and Formal Study of the Problem

An attentive Senate Finance Committee questioned representatives of more than 15 trade associations, including the N.C.A., the U. S. Chamber of Commerce, and the National Association of Manufacturers, in a two-day hearing, July 21 and 22, on bills to limit the power of the states to tax income derived from interstate business. H. E. Dunkelberger, Jr., of N.C.A. counsel's office, presented a statement (see page 246) urging (1) the enactment of temporary legislation at this session of Congress to prohibit a state from taxing income derived from interstate commerce by a company that does not maintain a place of business in the taxing state, and (2) to provide for an intensive study of the problem by a Congressional committee looking toward the enactment of permanent uniform standards to guide the states in imposing income taxes on interstate business.

Pending before the Senate Finance Committee are three proposals to deal with the problem arising from the Supreme Court decisions of February 24, 1959, in the *Northwestern States Portland Cement* and *Stockham Valves Cases* (See *INFORMATION LETTER* of April 11, page 155). Although not specifically endorsing any of the proposals, the N.C.A. witness in answer to a question by the Chairman of the Committee, Senator Harry F. Byrd, replied that the Saltonstall bill, S. 2281, seemed to best meet the problems confronting canners.

There appears to be no opposition to legislative action within the Senate Committee. Chairman Byrd commented during the hearings that the subject is the most important one to come before the Committee in the past 25 years and that he is impressed with the importance that will be attached to the language of the legislation. It is expected, therefore, that the Senate will act in the near future.

Companion measures are pending before the House Judiciary Committee but no action has been taken other than the appointment of a special study subcommittee (see *INFORMATION LETTER* of July 11, page 233).

The Canning Industry is N.C.A.'s general reference piece on the industry and its products. It will be used by N.C.A. to furnish information for newspaper and magazine editors and writers, radio and TV program directors, high school and college students, and others.

Inland Steel Announces Drive Promoting Canned Foods Use

A sales promotion involving canned corn, tomatoes, brown beans, fruits, pea soup and tomato soup will be conducted during October by Inland Steel Company. Copyrighted as "Taste Mates," the campaign will feature a number of easy-to-fix meals from canned foods and sausage meats, and is co-sponsored by Inland Steel, the Visking Company, and the Coca Cola Company.

Tools of the promotion will be advertisements to consumers in *Family Circle* and *Saturday Evening Post*, and to retailers in *Food Topics*, along with in-store merchandising materials and direct mail pieces.

In *Family Circle*, reaching 5 million shoppers, convenience of canned foods will be stressed along with the specifics of the meals illustrated: corn in casserole, tomatoes in pizza, beans in casserole, kabobs using canned fruits, pea soup, and a spaghetti dish using tomato soup sauce. All recipes include appropriate sausage meats. The copy will carry the new canning industry slogan "Nature's Best is Better Canned."

Inland Steel is printing a folder explaining the campaign to members of N.C.A. for mailing about July 20. This will be accompanied by a letter from Executive Secretary Carlos Campbell. A reply card with the folder will enable N.C.A. members to request shelf-

talkers which may be imprinted with their individual brands. Opportunity is accorded the salesmen of canners to help grocers install jumble displays with the appropriate "Taste-Mate."

Through a joint six-page insert advertisement in *Food Topics* the three sponsors will inform retail grocers about the drive and show them how to use the following point-of-sale materials: window or wall theme banner in four colors; sets of over-the-wire hangers picturing the "Taste-Mates" dishes; recipe booklets; and shelf-talkers. All materials in the kits supplied the retailers will be in color.

The Viking Company will carry a 1½-page, 4-color advertisement in the *Saturday Evening Post*, suggesting 10 recipes, six of which are those involving canned foods used in the *Family Circle* advertisement. It is estimated that the two magazine ads will reach more than 10 million consumers.

With Coca Cola bottlers, meat packers, and canners actively engaged in promoting the use of the in-store-merchandising materials, the sponsors feel the campaign will result in increased purchases by housewives thus stimulated to prepare tasty and attractive dishes featuring go-together foods.

Green Beans for USDA

USDA contemplates purchasing canned green beans of the 1959 pack for the National School Lunch Program. Purchases will be made on an offer and acceptance basis, using funds appropriated under the National School Lunch Act.

Offers will be considered only on round cut green beans in No. 10 cans. The beans are to meet the requirements of U. S. Grade A, but not exceeding size 5 and with short cuts not acceptable. Invitations to offer canned green beans, including detailed specifications, were mailed by USDA this week to packers of green beans.

Offers must be received by the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington 25, D. C., by 4 p.m. EDT August 7 for acceptance by August 14. Delivery will be required during the period September 8 through October 12.

Further details regarding the purchase may be obtained from Claude S. Morris of the Fruit and Vegetable Division of the AMS, at REpublic 7-4142, extension 2781.

Green Peas for Processing —Indicated Production

Production prospects improved about 3 percent during the first half of July, and on July 15 a total of 461,800 tons of green peas was indicated for canning and freezing this season, according to the Crop Reporting Board of USDA.

The production now in prospect is 5 percent less than the 1958 production of 485,510 tons but exceeds by 3 percent the average production of 449,800 tons for the 10-year period 1948-57.

July 15 indications point to a record high yield of 2,684 pounds of shelled peas per acre on 344,100 harvested acres. This compares with 2,567 pounds harvested from 378,200 acres in 1958, and the 10-year average of 2,090 pounds on 427,900 acres.

State	10-year ave. 1948-57 (tons)	1958 (tons)	1959 Indi- cated (tons)	Per- cent change from 1958
N. Y.	19,800	16,010	15,340	- 8
Pa.	14,000	9,350	7,800	-17
Ind.	2,300	2,180	2,000	- 8
Ill.	29,300	40,060	37,400	- 8
Mich.	4,000	6,420	3,500	-45
Wis.	127,800	137,830	105,000	-24
Minn.	49,700	62,100	48,300	-22
Del.	3,400	8,250	8,300	+ 2
Md.	9,700	11,520	10,500	- 9
Va.	1,800	1,000	1,120	+12
Idaho	11,200	11,110	13,780	+24
Wash.	75,000	83,110	95,700	+16
Ore.	54,400	60,620	75,600	+25
Calif.	11,900	7,080	11,200	+59
Other states ¹	34,900	27,090	26,170	- 5
U. S. Total	449,800	485,510	461,800	- 5

¹ Ark., Colo., Iowa, Kans., Maine, Mo., Mont., Nebr., N. J., Ohio, Okla., Tenn., Utah, W. Va., and Wyo.

N.C.A. Statement on State Taxation of Interstate Income

Following is the text of the N.C.A. statement on state taxation of interstate income, presented to the Senate Committee on Finance at a public hearing July 21:

Mr. Chairman: My name is H. E. Dunkelberger, Jr. I am appearing for the National Canners Association, a nonprofit trade association of 650 members canning in 48 of the 50 states and the territories. Members of the Association, including both independent canning companies and co-operative canning enterprises, pack approximately 75 percent of the entire national production of canned fruits, vegetables, specialties, and fish.

The National Canners Association urges that legislation be passed in this session of Congress to provide, first, that until a permanent solution is enacted, states may not impose a tax upon income derived from interstate commerce of a company that does not maintain a place of business in the taxing state, and second, that an appropriate Congressional committee undertake an intensive study of the problem, so that Congress within the next few years can establish equitable and uniform standards for the imposition of state income taxes upon businesses engaged in interstate commerce.

Until the recent Supreme Court decision in *Northwestern States Portland Cement Co. v. Minnesota and Williams v. Stockham Valve and Fittings, Inc.*, most canners did not feel obligated to pay state income taxes unless they maintained a place of business in the taxing state. Those cases now throw considerable doubt on this position, and raise the possi-

bility that canners may be liable to pay income taxes in all states where their products are sold. This would be a particularly harsh result for the canning industry, for the products of a particular canner, no matter how small he is, are seldom distributed exclusively in states where he maintains a place of business.

The extremely competitive nature of the canning industry frequently makes it necessary that canners distribute their products in as many states as commercially possible. This multi-state distribution is carried out in a number of ways, and no matter how large the canner, it can safely be said that his products are sold in many states where he maintains no place of business. These sales may be made by a traveling sales force, with or without a regional sales office, by independent brokers, or by correspondence with customers. Shipments may be made directly from the packing plant, from a regional company warehouse, or from a stock of goods temporarily stored in a centrally located public warehouse.

To assist the Committee in viewing the problem as it specifically relates to canning companies that fall within the Small Business Administration's definition, we elicited the following facts from a few representative canning companies:

A company in central Michigan sells its products in 17 states where it has no plant, sales office, warehouse, or stock of goods.

A canner in Wyoming sells in 10 states where it has no place of business.

A company in Maryland sells its products in 13 states, but all of its plants and sales offices are in Maryland. Stocks of goods are maintained in public warehouses in three other states.

A canner in Pennsylvania sells his products in 32 different states, and has no plant, sales office, warehouse, or stock of goods in 22 of these states. He does maintain warehouse stocks in 9 states.

Another Maryland canner sells in 17 states, and in 12 of these maintains no place of business or stock of goods.

A small Virginia canner sells his products in 4 states and the District of Columbia, and maintains no place of business outside of Virginia.

A larger Virginia canner, but still within the Small Business Administration's definition, sells into 25 states from his one Virginia plant, and maintains stocks of goods in 12 of these states.

The National Canners Association firmly believes that the wide distribution of the products of individual canners is in the immediate public interest, for it makes available to consumers a wide variety of products at reasonable prices established in a highly competitive market. Any tendency on the part of canners to restrict the distribution of their products to fewer states would therefore be contrary to the interest of the consuming public.

Almost certainly the effect of state taxation of a canner's income derived from sales in states where no place of business is maintained will be to reduce the number of states to which he ships his products. Faced with the necessity of complying with the varied and conflicting provisions of state income tax laws, many canners will no doubt decide that the profit from sales in some states does not justify the added expense of keeping precise account of sales destinations, filing returns, storing records, and engaging additional accountants and legal counsel to assure full compliance with diverse state laws.

We recognize that the problems inherent in establishing uniform and equitable standards for state taxation of income derived from interstate commerce make a quick solution practically impossible. For this reason, we support the two-stage approach, embodying an immediate temporary provision, followed by an intensive Congressional study looking toward permanent legislation.

The proposals before this Committee to restrict state taxation to companies maintaining a place of business within the state provide a convenient temporary solution to the problem that requires immediate attention. The tests adopted in these bills are largely taken from prior court decisions, and are not likely to produce uncertainty or increased litigation.

Although the National Canners Association will support any legislation which incorporates the two-stage approach outlined above, we respectfully request that certain specific points be included within that legislation.

First, although sales by an independent broker have never been considered enough in themselves to subject a principal to the jurisdiction of a state, Congress should make it unequivocally clear that a canner who sells through independent brokers in a state is not "doing business" in that state.

Second, a stock of goods temporarily stored in original packages in a public warehouse should not in itself subject a canner (or other business) to state income taxation. Storing goods in a public warehouse is frequently a necessary step in the shipment of those goods from factory to customer, and involves the seller in no additional activities within the state that can fairly be called "doing business." The mere fact that the goods come to a temporary halt should not subject the seller to state taxation. In most cases the canner will have no employees in the state, making sales exclusively through independent brokers. The maintenance of a permanent warehouse, with a staff of employees, is quite a different thing, and certainly falls within what is generally understood as "doing business."

Third, the legislation should apply to taxes imposed on, or measured by, income. The name chosen by a state to describe its tax should be unimportant.

Finally, we want to emphasize that the Association's support of a temporary solution hinging taxability upon maintaining a place of business in no way implies that we believe such a solution should be adopted as part of permanent legislation. Although we have not yet developed a proposal for a uniform allocation formula, we anticipate that such a proposal will result in equal treatment for those engaging in similar activities. For example, it might be contended that sales solicitation by company salesmen should be treated the same, independently of where a sales office happens to be maintained. The all or nothing approach of the temporary proposals draws arbitrary lines that cannot be justifiably defended, other than that they provide some help for many businessmen, pending further study. A permanent solution should include the establishment of uniform allocation formulas that would assign fair, relative weights to all of the significant factors.

We sincerely hope that this Committee will see fit to recognize the real and imperative need of business for a solution to the problems raised by the Supreme Court decisions, and we respectfully request that Congress enact in this session legislation along the lines here advocated.

Status of Legislation

Agricultural trade development: H.R. 7983—Public hearings, begun July 14 by the House Agriculture Committee, are continuing. S. 1748—Reported July 15 by the Senate Agriculture Committee; no further action.

Clayton Act: S. 726—Signed by the President July 23 and is P. L. 86-107.

Consumer expenditures: H.R. 4420—Referred to the House Commerce Committee; no action taken.

Co-op jurisdiction: H.R. 200—Referred to the House Judiciary Committee; no action taken.

Country Life Commission: Bills providing for the establishment of such a Commission were considered in May by a subcommittee of the House Agriculture Committee; no further action taken.

Crew leader registration: H.R. 5990—Referred to the House Subcommittee on Labor Standards; no action taken. S. 1778—Public hearings by the Senate Labor Subcommittee may begin next week or the first week of August. N.C.A. opposes.

Fair trade: H.R. 1253—Reported June 9 by the House Commerce Committee; presently in the House Rules Committee. S. 1083—The Senate Subcommittee on the Fair Trade Bill voted July 22 to take no further action on the legislation this year.

FDA artificial coloring: H.R. 7624—Referred to the House Commerce Committee; no action taken. S. 2197—Referred to the Senate Labor Committee; no action taken.

FDA pesticides: H.R. 6436—Passed by the Senate July 16 with a technical amendment and returned to the House for routine approval.

Federal pre-emption: H.R. 3—Passed by the House and referred to the Senate Judiciary Committee; no action taken. S. 3 was the subject of hearings by the Senate Subcommittee on Internal Security in April and May; no further action taken. N.C.A. opposes application to food laws.

Food stamps: Hearings on a number of bills have been conducted by the Senate Agriculture Committee. It is possible that the Committee will report out a bill providing for a trial program which would incorporate the features of several of these bills. Despite some pressure to turn over this program to the Department of Health, Education, and Welfare, it is likely that the U. S. Department of Agriculture will be kept in the surplus foods distribution program. N.C.A. opposes these bills.

Industrial uses of farm products: Following completion of hearings by a subcommittee of the House Agriculture Committee, two bills (H.R. 7576 and H.R. 309) were referred to the USDA for comments; no further

action taken. S. 690 was reported by the Senate Agriculture Committee in April; no further action taken.

Intergovernmental relations: S. 2026—The Senate Committee on Government Operations met July 23 in executive session and agreed to report favorably an amended version of this bill. The House Government Operations Subcommittee, with which the Senate committee held joint hearings on the legislation last month, has agreed informally to report a companion bill.

Labor-management practices: S. 1555—Passed by the Senate, with amendments, and referred to the House Labor Subcommittee where now under executive consideration.

Marketing of potatoes: S. 17—Referred to the Senate Agriculture Committee which has obtained a "neutral" report from the USDA; no action taken.

Marketing of turkeys: H.R. 1344—Hearings on this bill were cancelled two weeks ago by the House Agriculture Committee in deference to hearings on the poultry and egg situation and the general farm problem; they may be rescheduled soon. S. 430—Because of divided opinion within the industry, no action is contemplated by the Senate Agriculture Committee on this or a similar bill. N.C.A. opposes application to canning.

Marketing orders and parity: H.R. 642—The House Agriculture Committee has referred this bill to the USDA for an opinion.

Marketing order regions: H.R. 1070—Referred to the House Agriculture Committee; no action taken.

Premier notification: S. 442—Approved by the Senate Antitrust Subcommittee on May 7; no action taken by the Senate Judiciary Committee.

Price increases: H.R. 4934—Referred to the House Judiciary Committee; no action taken. Hearings on S. 215, a similar bill, were completed before the Senate Antitrust Subcommittee in May; no further action taken. H.R. 6263 was reported out by the House Government Operations Committee June 12; no action taken by the House. S. 2382, a companion to H.R. 6263, has been referred to the Senate Subcommittee on Production and Stabilization. N.C.A. opposes these bills.

Raw product bargaining: H.R. 1793 has been referred to the House Judiciary Committee; no action taken.

Robinson-Patman functional discounts: H.R. 4530 was the subject of hearings in June by the House Antitrust Subcommittee; no further action taken.

Robinson-Patman "good faith" defense: H.R. 11 has been referred to the House Judiciary Committee; no action taken. A similar bill, H.R. 929, is pending before the Committee. S. 11 (identical with H.R. 11) was approved by the Senate Antitrust

Subcommittee on May 7 and is pending before the full Judiciary Committee. N.C.A. opposes.

State taxation: N.C.A. testified on July 22 at a hearing by the Senate Finance Committee on S. 2281, S. 2213, and S.J. Res. 113 (see story page 245). H.R. 7757, H.J. Res. 431, and a number of similar bills have been referred to the House Judiciary Committee which has appointed a special study subcommittee.

Unemployment compensation: H.R. 7177 and H.R. 7178 have been referred to the House Ways and Means Committee; no action taken.

Wage-hour: S. 1046—This bill, as amended and approved July 10 by the Senate Subcommittee on Labor, would increase the statutory minimum wage and curtail the overtime exemption available to fruit and vegetable canners. No action taken by Senate Labor Committee. N.C.A. opposes changes in the exemptions (see INFORMATION LETTER of July 18, page 237).

Waste disposal facilities: H.R. 322—Referred to the House Ways and Means Committee; no action taken. N.C.A. supports.

FISHERIES LEGISLATION

Construction differential subsidy: H.R. 5421—Following a hearing by the House Fisheries Subcommittee on July 8, the bill has been redrafted and will be presented to the full Merchant Marine and Fisheries Committee, probably next week. S. 2338—No action taken since the hearing before the Senate Fisheries Subcommittee July 9. Additional hearings have been scheduled Aug. 4, 5, and 6.

Fisheries Assistance Act: A number of proposals on this subject are pending before the House Fisheries Subcommittee; no action scheduled.

Fishermen's Protective Act: S. 971 has been referred to the Senate Fisheries Subcommittee; no action taken.

Mortgage and Loan Insurance: H.R. 3169 has been referred to the House Merchant Marine and Fisheries Committee where no action has been taken; unfavorable reports have been

received from the Commerce and Defense departments. A similar bill, S. 555, has been referred to the Senate Merchant Marine and Fisheries Subcommittee; no action taken. S. 2342 has been referred to the Senate Interstate and Foreign Commerce Committee; no action taken.

Polluted shellfish: H.R. 1244—Referred to the House Ways and Means Committee; no action taken. S. 2112—Referred to the Senate Finance Committee; no action taken.

Salmon conservation: S. 502 was considered in hearings and executive session by the Senate Commerce Subcommittee in April and May; no further action taken. A hearing on H.R. 4293 was held May 14 by a subcommittee of the House Fisheries Committee; no further action taken.

Salmon predator: S. 1264 was passed by the Senate, with an amendment, on July 6, and is pending before the House Fisheries Committee.

Tuna quotas: H.R. 443, H.R. 447, and H.R. 673 are pending before the House Ways and Means Committee; no action taken.

MSSA Requirements for Canned Tomatoes

Tentative requirements for canned tomatoes from the 1959 pack to meet the needs of the armed services have been announced by the Military Subsistence Supply Agency. Procurement will be made by the Oakland Military Subsistence Market Center, 2155 Webster St., Alameda, Calif., and the Richmond Military Subsistence Market Center, 1722 Arlington Rd., Richmond 30, Va.

Estimated requirements are for 24,060,000 pounds of whole or large pieces, Grade A (Fancy) or B (Extra Standard), Type I, in No. 10 cans and 15,740,000 pounds in No. 303 cans. This is the equivalent of 629,000 cases of 6/10's and 655,833 cases of 24/303's.

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